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May 28, 2004

Via ECFS
Federal Communications Commission
Wireline Competition Bureau
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of IP-Enabled Services, Notice of Proposed Rulemaking, WC Docket No. 04-36

Attached are the comments of Sonic.net, Inc. regarding the proceeding noted above. I can be reached at 415 577-4241.

Sincerely,

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cc: Dane Jasper

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In the Matter of IP-Enabled Services	)	
	)	WC Docket No. 04-36
Notice of Proposed Rulemaking	)	FCC 04-028

Introduction

This comment seeks to provide one Internet service provider's ("ISP") perspective on the Federal Communications Commission's ("the Commission" or "FCC") docket seeking input on its rulemaking concerning Voice over Internet Protocol ("VoIP") technology. Sonic.net is an ISP located in Santa Rosa, California. Sonic.net is one of the largest independent ISPs in California providing broadband services via digital subscriber line ("DSL") and fixed wireless.[1] Sonic.net is excited about the future of VoIP and the potential to provide such advanced applications and services to its customers.

The Commission must tread carefully in order to reach the desired result of enabling consumers to receive the full benefits of this technology. VoIP providers must not be shackled by the hopelessly broken access charge system. And if competitive choice among VoIP providers is desired, the Commission must reverse course on its inter-modal broadband competition policy. Otherwise, it will just be a matter of time before consumers have VoIP as an option, but will only be able to get it from their local incumbent telephone carrier or monopoly cable company. Finally, Sonic.net proposes an interim solution for the current public safety limitations of VoIP technology.

Light Regulation Should be Applied

Although the FCC is much maligned for the current lack of facilities-based local exchange competition, the FCC should look to its past policy successes when considering how and if to regulate VoIP. Long distance competition has thrived as a result of common-sense FCC policy changes beginning twenty years ago. Cellular phone services have soared in recent years as a result of Commission policy. And by any reasonable measure, the FCC's initial policies towards Internet usage were a large contributor to making the Internet a vital element in people's everyday lives. As a very general matter, the FCC should consider these precedents when applying any rules to VoIP services and seek to regulate only where absolutely necessary to encourage VoIP deployment while preserving important social goals.

Access Charges Should Not be Applied

In order to encourage VoIP, one area that must be cleared up immediately is access charges. Would an ISP be required to learn the intricacies of the carrier access billing system ("CABS") in order to provide a VoIP application to its customers? Such a requirement would kill VoIP before it even gets off the ground. True VoIP providers should not be required to pay into the Byzantine access charge system.

[1] "Independent ISP" is used here to describe an ISP that is not affiliated with an incumbent local exchange carrier or cable system operator.

The current access charge system amounts to an implicit subsidy system. The 1996 Telecommunications Act tasks the FCC with making all subsidies explicit and competitively neutral.[2] If the rural ILECs need more money to provide functioning copper telephone lines to their customers, that is fine. There are much clearer ways to reach that social goal. And as for the former Bell monopolies, given the relatively small amount of traffic that is at stake in the immediate future, they simply do not need the money. For one simple example, SBC made a profit of $1.9 billion in the first quarter of 2004. That represents potential profit of $8 billion for 2004, and yet, the company is disappointed by the results. Companies should be compensated on a reasonable basis for originating and terminating calls. But the Commission really must ask a common sense question. Why do companies making $8 billion in annual profits need to receive access charges of even a penny/minute to terminate a VoIP call? Surely this must be higher than the actual cost. As for rural carriers, their rates are as high as 10 cents/minute, again, this amounts to a subsidy, and one that the rural carriers are quite open about demanding. Access charges should not be applied to VoIP providers, many of whom are not making substantial use of the public switched telephone network to originate, route, and complete VoIP calls. The FCC should implement a bill and keep system for VoIP.

Reasonable Access to Broadband Facilities is Vital

One area that FCC policy is failing could also have the effect of killing VoIP before it even gets a toehold. Current FCC policy favoring intermodal broadband competition must be changed. VoIP requires broadband to be fully functional and reliable. If the Commission fails to preserve ISP access to broadband facilities, this NPRM will ultimately be futile.

Right now, the residential broadband market as a whole[3] is overwhelmingly dominated by monopoly and former monopoly providers. According to the recent Pew Internet & American Life survey, 42% of residential broadband users use DSL, 54% use cable modems.[4] That combines to represent fully 96% of the total residential broadband market. For the DSL market, well over 90% of that market is served by ISPs that are affiliated with the incumbent local exchange carrier.[5] Meanwhile, of that other 54% served by cable modems, almost all of those customers are served by the cable companies' affiliated ISPs. So let us be clear—the overall broadband market is being monopolized.

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[2] See Section 254 of the Telecommunications Act of 1996.

[3] The "total broadband market" includes broadband Internet services provided by DSL, cable modem, fixed wireless, mobile wireless, and satellite. Sonic.net believes that in fact, ach of these markets are distinct. DSL is not available in some areas where cable modem service is available and vice versa. Despite recent improvements to latency and quality of service issues, wireless and satellite still do not provide sufficient characteristics to support carrier-grade voice service provided via VoIP.

[4] http://www.pewinternet.org/reports/reports.asp?Report=120&Section=ReportLevel1&Field=Level1ID&ID=506

[5] This is an estimate as obtaining exact figures on this is impossible. ILECs guard this information, as perhaps they should, to protect themselves from antitrust claims regarding their monopolization of the DSL market.

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Given this state of the combined broadband market, there is little room for independent ISPs to provide the broadband services on which VoIP is carried. The FCC has made it abundantly clear that it simply does not care about this issue, and the inter-modal competition policy is the ultimate statement. If broadband services continue to be monopolized, only the monopolies will be in position to provide VoIP.

If the Commission does not guarantee ISPs fair access to all broadband platforms, VoIP will either be the realm of monopoly broadband providers or relegated to a niche market such as cheap international calling cards. Given the potential consumer benefits of VoIP, this would indeed be a shame. In order for VoIP to blossom, the Commission must guarantee ISPs fair and economically reasonable access to ILEC DSL transport as well as open access to the cable modem platform. Does it make any sense to go through all this bother with the NPRM if the ultimate result is consumers having a "choice" between the bundled data/VoIP products from their local telco or local cableco?[6] Is that the type of extreme competition that any ILEC should really fear?

Unless this is assured, the FCC will end up with a mass migration of traffic to VoIP, but very little competition among VoIP providers. This will result in higher prices and less innovative services for consumers—the exact opposite of what VoIP as a technology makes possible.

Public Safety Concerns—A Proposal

The Commission has very valid concerns over the effect of power outages and the lack of E911 access inherent to VoIP services. VoIP providers and technology vendors are working diligently and making great strides to solving these problems. For example, at least two VoIP vendors make gateways that allow for "POTS passthrough." If a consumer dials 911, the call is immediately routed over the regular phone line and transmitted to the proper public safety answering point. And if the power fails, the consumer's phone service falls back to the POTS line. This is great, but the consumer is still stuck paying at least $15/month to maintain a functioning POTS line. The Commission should develop a policy that gives consumers the ability to determine their level of comfort. In the interim, there is a simple measure that could be taken—require ILECs to provide a $3/month VoIP safety line.

Customers who choose to use VoIP on their broadband connection have two potential safety problems. In the case of an electric outage, the broadband connection will be inoperable and VoIP service will not function. In this case, consumers would not be able to call public safety agencies in the case of an emergency. Even if the broadband connection is working, VoIP providers are struggling to allow E911 services to locate a customer making an emergency call.

Meanwhile, almost every house and business in America already has at least one copper telephone line entering the premises. Right now, if a consumer wished to keep their landline operational as a back-up for their VoIP service, it would cost a minimum of $15/month in most areas including state and federal surcharges. The Commission should order all local carriers of last resort to provide a state or federally tariffed "VoIP Back-up Line" that cost a flat fee of $3 with all federal and state surcharges included and no

[6] And despite what the FCC apparently believes to be the case, a very large percentage of consumers do not even have a choice between DSL and cable in their neighborhoods. They have one or the other. In these areas, actual competition would be nonexistent.

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subscriber line charge. With this in place, a consumer could subscribe to a VoIP service and be protected in the event of an electric outage and be assured that public safety agencies will respond to the proper address during an emergency.

Sonic.net is very aware that this idea will not be popular with most incumbent carriers. Every time the incumbent's market share is threatened, they immediately cry foul, threaten imminent disaster to the public switched telephone network and/or caution that grandmothers in rural areas will have their phones taken away from them. Enough already. Even though VoIP is potentially a "disruptive technology," ILECs already enjoy every conceivable advantage. They have total pricing power over the DSL market and their affiliated ISPs have wielded that to gain firm control of marketshare for DSL. ILECs have strong brands and consumer trust in their ability to provide quality voice services. Requiring ILECs to provide this back-up solution would have minimal impact on their bottom lines and allow consumers the flexibility to try VoIP.

Some more forward looking ILECs might actually embrace this idea and seize on it as an opportunity to keep customers on their networks rather than risk losing them from a migration to cable VoIP. Qwest already is allowing consumers to purchase "naked DSL," an active DSL copper loop into the customer premise with no local telephone service. Reportedly, Verizon will be offering this as well. The VoIP safety-line solution should be applied to "naked DSL" as well. This would provide a real and immediate solution allowing consumers the option of trying VoIP without the burden and cost of unwanted local circuit-switched telephone service.

Conclusion

VoIP has the potential to bring great consumer benefits. Independent ISPs such as Sonic.net are uniquely qualified to transport bits and provide a quality consumer experience. For VoIP to reach its true potential, however, the Commission must enact policies that allow independent ISPs the ability to offer these services to their customers and allow consumers to have a cost-efficient means to use the service.

Respectfully submitted,

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